

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 96-786

May 14, 1998

CENTRAL MAINE POWER COMPANY
Petition for Approval to
Furnish Gas Service In and To
Areas Not Currently Receiving
Natural Gas

ORDER GRANTING NORTHERN
UTILITIES, INC.'s MOTION
FOR RECONSIDERATION

WELCH, Chairman; NUGENT and HUNT, Commissioners

I. SUMMARY OF ORDER

We grant Northern Utilities Inc.'s Motion for Reconsideration to consider public interest issues in Phase II of this proceeding, now pending.

II. BACKGROUND

By Order in this docket dated March 11, 1998 (March 11th Order), we granted Central Maine Power Company (CMP), on behalf of its joint venture with New York State Electric and Gas (NYSEG), conditional authority to serve within 60 cities and towns in Maine pursuant to 35-A M.R.S.A. §§2104 and 2105. We found that the joint venture possesses the general financial and technical capability to serve as a public utility and that need exists in the designated municipalities because natural gas service is currently not being provided in those areas. The March 11th Order did not allow CMP to construct or operate a natural gas system public utility until the Commission has reviewed and approved detailed financing, construction and resource plans, and has granted CMP full, or unconditional, service authority.

On February 23, 1998, CMP filed its "Phase II" proposal for unconditional authority in 35 municipalities,¹ grouped into six distinct system areas: the Bethel, Windham/Standish, Augusta,

¹ Augusta, Gardiner, Hallowell, Farmingdale, Randolph, Chelsea, Manchester, Waterville, Fairfield, Winslow, Oakland, Vassalboro, Bangor, Brewer, Old Town, Orono, Milford, Herman, Holden, Hampden, Veazie, Orrington, Bucksport, Bath, Brunswick, Topsham, Freeport, Falmouth, Yarmouth, Cumberland, Windham, Raymond, Standish, and Bethel.

Waterville, Bath/Brunswick, and Bangor areas. The initial schedule established intervenor testimony on April 17th, a hearing on May 15th, and a final decision on the application by June 26th.

III. NORTHERN'S MOTION FOR RECONSIDERATION

Northern Utilities, Inc. (Northern), Maine's only operating local distribution company (LDC), was previously granted full service authority in all but five of the municipalities named in CMP's petitions by Commission order in 1969.² *See Northern Utilities, Inc., Re: Petition for Consent to Furnish Natural Gas Service in and to Any City or Town of the State of Maine, #U. 2782* (June 27, 1969).

On March 31, 1998, Northern filed a Motion for Reconsideration of the March 11th Order. In its Motion, Northern argues that the Commission failed to consider the overall public interest in granting CMP authority to serve in an area where a public utility (Northern) is already authorized to serve. Northern requested that the Commission reopen Phase I to consider these issues in its determination of need, or, alternatively, to consider these issues in Phase II of the CMP proceeding.

Northern argues that the statute requires that in its review of CMP's application for service authority, the Commission must find that a second utility (in addition to the first) is in the public interest. Northern also notes that public interest factors would include

issues such as uneconomic duplication of facilities, fairness to existing investors, and any other factor implicated by the Commission's broad public policy standard.

See Mid-Maine Gas Utilities, Inc., Request for Approval to Furnish Service, Docket No. 96-465 (March 7, 1997) (*Mid-Maine*) at 10. Northern notes that the Commission also acknowledged in *Mid-Maine* that review of an application for service authority under sections 2102 and 2105 would necessarily be fact dependent. *Id.* at 2. Northern maintains that CMP, as the applicant, has the burden to show that the public convenience and necessity requires that the Commission authorize it to serve.

² Northern does not have authority to serve in Bangor, Brewer, Old Town, Orono, and Veazie.

Northern argues that in reviewing an application for a second utility the Commission should consider whether a sufficient market exists to support two utilities. If not, the Commission should deny the application. Northern maintains that utility failure or bankruptcy, after some service has commenced, would adversely impact remaining gas service in Maine and future development of gas service within the state. Consequently, Northern recommends against implementing a market driven policy for determining which entity or entities should serve in an area. Second, Northern argues, the Commission should consider the previously authorized utility's investment in infrastructure designed to allow and support future growth and system expansion. Northern argues the previously authorized utility requires some measure of security in order to make investments requiring a lengthy pay-back time. Recognition of this will promote the orderly and efficient development of natural gas infrastructure; failure to recognize this could result in confiscation of the previously authorized utility's property.

Additionally, Northern argues that it will be disadvantaged by having the Commission allow a second utility into its existing service authority simply on a finding that no service currently exists because, prior to having interstate pipelines in service, there has not been adequate supply to do so. Northern states it has been working toward expanding its system into various areas of the state both by investing in new gas supply projects (such as Portland Natural Gas Transmission System (PNGTS) and the Wells liquified natural gas (LNG) facility) that are designed to provide additional supply resources and by constructing its system in a forward-looking manner. *See e.g. Northern Utilities Inc., Petition for Approval of a Firm Gas Transportation Agreement with Specialty Products and Proposed Large Volume "LV" and Extra Large Volume "ELV" Transportation Rates and Terms and Conditions*, Docket No. 95-236, (August 16, 1995). Northern argues it would be unfair to penalize it by allowing a second utility service authority in its territory under these circumstances. Consequently, Northern requests that the Commission consider whether the public interest requires a second utility to serve in the municipalities in which it is already authorized to serve.

IV. POSITIONS OF THE PARTIES

CMP argues that the Commission would have to take a closer look at an application under section 2105 for authority to serve in any municipality where another utility is already serving, but not in any area where a utility is authorized to serve, but not serving. CMP objects to reopening Phase I and supports the

competitive market policy described in *Mid-Maine* for unserved areas.

Bangor Gas Company (BGC) points out that in *Mid-Maine*, the Commission stated that a finding of need will not preclude the commission from considering other related (i.e. public interest) issues before granting an applicant authority to provide service. However, BGC favors the policy articulated in *Mid-Maine* that the Commission let the market decide how unmet need will be met in areas which lack existing service, even where full service authority has already been granted to a utility, barring evidence of harm that would require Commission intervention.

The Office of the Public Advocate (OPA) argues for the Commission to hold a comparative proceeding in all areas of the state, whether or not any entity is fully authorized to serve these areas. OPA further argues that no deference is required to the first fully authorized utility. Rather, the Commission should select among all entities the entity that can provide the best service at the lowest price in the areas in question, thereby promoting the orderly and efficient development of infrastructure.³ OPA suggested that the Commission grant Northern's motion and order Northern to "show cause" why no other utility should be awarded a section 2105 authority to serve within Northern's service territory. OPA notes that there may be sufficient reason to give preference to Northern in areas contiguous to areas it currently serves (because of previous investment in expansion facilities) but not in areas that are farther away. Furthermore, OPA argues that Northern's authority may be suspended under the Commission's authority to modify orders pursuant to 35-A M.R.S.A. 1321.

Maritimes & Northeast Pipeline L.L.C. (MNE) argues that there is a threshold issue for the Commission to consider: whether there should be more than one LDC per geographic service area. MNE argues that unless the Commission wishes to open up natural gas transportation to competition between LDCs, LDC service in Maine should be limited to one LDC per service area. That being the case, the only remaining question for the Commission is whether it is economically feasible for the authorized utility to provide service. If so, the Commission may

³ OPA filed a Motion for Comparative Proceeding in *Bangor Gas Company L.L.C., Petition for Approval to Provide Gas Service in the Greater Bangor Area*, Docket No. 97-795, which was also deliberated on April 28, 1998. The Order denying OPA's Motion will be issued separately.

order that utility to provide service to areas in which it is not now doing so within its authorized service territory. MNE also suggests that the Commission could rescind an authorized utility's service authority and award the territory to another entity.

V. DISCUSSION

we grant Northern's motion to allow consideration in Phase II of public interest issues that bear on whether or not we should authorize another utility to serve in municipalities in which Northern is authorized to serve, but is not currently serving. We will consider whether, as a general matter or as to any particular area, Northern's existing service authority "raises the bar" to a point where we may find that authorizing a second utility is not in the public interest. However, it is unlikely that the mere existence of Northern's (or another entity's) previously-granted service authority, by itself, would constitute sufficient reason not to authorize another entity to serve. We will examine the facts specific to each of the areas in which there is an additional application to serve. Those facts may or may not preserve an entity's current right to provide service to the exclusion of others.

The statutory framework clearly vests in the Commission the discretion to determine which entity could best serve the public in view of the attending circumstances. *See Biddeford and Saco Gas Company v. Portland Gas Light Company*, 233 A.2d 730 (Me. 1967). *See also Contel of Maine, Inc. Proposed Maps to Provide for Boundary Change Between Contel and Bryant Pond Telephone Company*, Docket No. 90-083 and *Bryant Pond Telephone Company, Boundary changes Agreed upon with Contel of Maine*, Docket No. 90-115, Order at 11, n. 10 (October 3, 1990). 35-A M.R.S.A. § 1321 allows us to rescind, alter or amend any order. We recognize that there may be valid issues regarding investments made in reliance upon, and with reasonable expectation of, the continuation of that authority, as well as economic efficiencies that may be identified.⁴ As with subsequent or additional grants of authority, we will review questions regarding the need to suspend, apportion, or rescind service territory authority on a case-by-case basis.

We also modify the broad market-driven policy expressed in *Mid-Maine* by now recognizing that we may be in a better position,

⁴ Any reliance after the *Mid-Maine* order might be difficult to justify as "reasonable."

as compared to municipal permitting authorities, to determine the manner in which service to an area should be developed. The appropriate public interest result will be guided by the factual context in which each application is reviewed.

Our decision herein granting Northern's request to consider public interest factors in determining whether CMP should be allowed to serve in the proposed municipalities in which Northern now has service authority expands the scope of this proceeding. The parties have provided comment on which entity has the burden of proof or a burden of production.

Northern has raised the issue as to whether CMP should be authorized to serve in the designated municipalities that Northern has been authorized to serve. Consequently, we allow CMP an opportunity to address this issue in further testimony and for Northern to supplement its testimony in response. While the burden of proof ultimately is on the applicant, we would expect Northern to present sufficient responsive evidence regarding the nature and extent of its capital investment and plans to serve the proposed municipalities, its anticipated in-service date, and to demonstrate the economics of its expansion into these areas. This evidence will be necessary to support a finding that the public interest is (or is not) served by authorizing another utility to fulfill the service needs in the designated municipalities at this time.

Accordingly, we will allow CMP further opportunity to supplement its case as to why the public interest requires us to authorize it to serve in the areas contained in its Phase II application.⁵ Following that, Northern may file responsive testimony justifying a finding that the public interest does not favor granting such authority to CMP. As always, we will endeavor to resolve the issues as expeditiously as possible in order not to inconvenience the applicant while allowing sufficient process to air relevant issues.

⁵ In its prefiled testimony and at technical conference on May 7th, CMP indicated that expeditious review of three areas is necessary in order not to jeopardize its proposal to provide service to customers by November 1998: Bethel, Windham, and the Bath-Brunswick area. Given this urgency, we suggest that CMP consider presenting supplemental testimony only on these areas at this time and to propose separate schedules for the resolution of these "priority" areas and the remaining areas contained in its application. Including all areas now may result in a lengthier time frame for resolution than the priority areas alone would require.

Accordingly, we

O R D E R

1. That Northern Utilities, Inc.'s Motion for Reconsideration is granted to allow consideration of public interest issues in Phase II of this proceeding as described above.

Dated at Augusta, Maine this 14th day of May, 1998.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: WELCH
NUGENT

COMMISSIONER HUNT DID NOT PARTICIPATE IN THIS DECISION